

Massachusetts State Revolving Fund Program Updates for 2016

December 16, 2015

Topics

- Clean Water Act Amendments (WRRDA)
 - *Fiscal Sustainability Planning (Asset Management)*
 - *Cost and Effectiveness*
 - *A/E Services Procurement*
 - *Affordability Criteria*
 - *Project Accounting*
- Signage Requirements
- Federal Flood Risk Management – EO 13690
- American Iron and Steel Update
- Chapter 259 of the Acts of 2014
 - *Planning and Technical Assistance Grants*

Fiscal Sustainability Planning

- For Clean Water projects on the 2016 Intended Use Plan the EPA is requiring the preparation of “Fiscal Sustainability Plans” (FSP).
- An FSP is very similar to an asset management plan.
- Applicable to “treatment works” projects, i.e., section 212 projects.
- **Not applicable** to non-point source projects (section 319), planning projects or Drinking Water projects.

Fiscal Sustainability Plans

VS.

Asset Management Plans

Fiscal Sustainability Plan

- Inventory **critical** assets.
- Evaluate the condition and performance of those assets.
- Prepare a plan for maintaining, repairing and replacing the treatment works.
- Prepare a plan for funding such activities.
- **Certify that water and energy conservation efforts have been evaluated and will be implemented as part of the plan.**

Asset Management Plan*

- Inventory assets and assess condition.
- Determine asset values and replacement costs.
- Determine sustainable level of service.
- Determine critical assets.
- Determine life cycle costs.
- Develop long-term funding strategy.
- Implement and follow up – Plan, Do, Check, Act.

*EPA Asset Management: A Best Practice Guide

Fiscal Sustainability Plan

- FSP must be a written plan – available for inspection.
- It must include the five required elements.
- For 2016 projects, FSP must be completed by the completion of the project (typically 1-3 years from the issuance of the IUP) – a condition will be added to the Project Regulatory Agreement.
- FSP must certify that water and energy conservation efforts have been evaluated and will be implemented as part of the plan.
- Borrower must certify that the FSP has been developed and **implemented** – MassDEP to develop certification.

Fiscal Sustainability Planning

- Developing an FSP is an eligible cost for SRF financing.
- Many resources are available for development of asset management and FSPs:
 - *EPA WRRDA Final Guidance*
 - *EPA Asset Management Best Practices Guide*
 - *State of Maine Guidance on FSPs*
 - *Several states have developed asset management guidance (New Jersey, New Mexico, etc.)*
- MassDEP will not initially be reviewing FSPs (unless SRF is financing) – certification will be required.
- If serious issues arise with compliance, contact your Program Manager to discuss.

Cost and Effectiveness

- Starting with the 2016 IUP, the EPA is now requiring a certification that the borrower:
 - *has evaluated the cost and effectiveness of the processes, materials, techniques and technologies for carrying out the proposed project; and*
 - *has selected, to the maximum extent practicable, a project that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—*
 - the cost of constructing the project;
 - the cost of operating and maintaining the project over the life of the project; and
 - the cost of replacing the project.

Cost and Effectiveness

- The SRF regulations require all projects to have a planning element (310CMR 44.08(3)).
 - *A CWMP requires an **alternatives analysis** and a demonstration of **cost-effectiveness**.*
 - *A PER requires an analysis of **cost-effectiveness**, **alternatives considered**, and **capital and O&M costs**.*
- Only new requirement is water and energy conservation – append to planning document.
- EPA has guidance on energy and water efficiency in WRRDA Final Guidance.
- MassDEP to develop certification form to go into Clean Water Loan Application.

A/E Services Procurement

- Architectural and Engineering services that are paid with **federal funds** must be procured using the **qualifications based selection** process under 40 USC Ch 11 or **equivalent state requirement**.
- Massachusetts uses two different methods of A/E service procurement:
 - *Chapter 149 projects (vertical construction) require the use the designer selection law (MGL c. 7C), which is a qualifications-based selection process*
 - *Chapter 30 §39M projects (horizontal construction) are not subject to the designer selection law and may use price in evaluating a design contract.*

A/E Services Procurement

- Procurement process for Ch 149 projects appears to meet 40 USC 11, Ch 30 §39M does not.
- Initially, MassDEP will not finance A/E services with federal funds.
- If overall project will receive federal funds, A/E services will be segregated from project and given a separate loan.
- MassDEP and Trust attorneys will evaluate MGL ch 7C to determine if it is equivalent to 40 USC 11.

Affordability Criteria

- For 2016, the method by which principal forgiveness will be distributed has been changed.
- The EPA required each state to develop affordability criteria based on:
 - *Income*
 - *Unemployment rate*
 - *Population trends*
- Environmental Justice communities will **no longer** be the proxy for affordability.
- While EPA only mandated this for Clean Water projects, MassDEP will use it for both programs as a matter of consistency.

Affordability Criteria

- The following is how the new formula will work:
 - *The calculation starts with the per capita income (PCI) for the community*
 - *This is adjusted by the employment rate (e.g., 5% unemployment = 95% employment – results in a multiplier of 0.95)*
 - *This is then adjusted by the population trend between the 2000 and 2010 census (e.g., a 10% increase in population is a 1.1 multiplier, while a 10% decrease is a 0.90 multiplier)*
- These factors result in the adjusted PCI (APCI) for the community.

Affordability Criteria

- There will be three levels of additional subsidy:
 - *Tier 1 - 80-100% of Massachusetts APCI- 0.5 share*
 - *Tier 2 - 60-80% of Massachusetts APCI – 1 share*
 - *Tier 3 - Below 60% of Massachusetts APCI – 1.5 shares*
- This results in the neediest communities receiving the largest share of principal forgiveness.
- The methodology was posted for public comment in August and was finalized at the end of September.

Project Accounting

- The EPA is requiring that project accounts be maintained in accordance with generally accepted government accounting standards, including **standards relating to the reporting of infrastructure assets.**
- The current Project Regulatory Agreement (PRA) states “The Borrower shall establish accounts for the Project which shall be maintained in accordance with generally accepted government accounting standards.”

Project Accounting

- The most recent applicable standard is Governmental Accounting Standards Board (GASB) Statement No. 34, which details governmental reporting requirements of infrastructure assets.
- MassDEP will be changing the standard condition in the PRA to reflect this change.
- It is expected that this change will have little, if any impact on SRF borrowers as most communities are already complying with GASB 34 requirements.

Project Signage

- In an effort to communicate the positive impact and benefits of EPA funding and to increase awareness surrounding the improvements communities receive as a result of SRF assistance, the EPA is now requiring project signs.
- This is applicable to both Clean Water and Drinking Water projects for 2016 and beyond.

Project Signage

- The EPA guidance gave wide latitude for the implementation of this requirement including:
 - *Standard signage*
 - *Posters or wall signage in a public building*
 - *Newspaper ad for project construction, ground breaking ceremony, or operation of the facility*
 - *Online signage placed on community website or social media outlet*
 - *Press release*
- MassDEP recommends that for projects that plan to use a sign, the EPA requirements should be added to it; if not, one of these other methods may be used.

Federal Flood Risk Management

- **EO 13690** amends EO 11988 (from 1977) and re-defines the term “floodplain” from the current base flood (100-year flood plain) to a higher vertical elevation.
- It appears that this will only be applicable to projects that receive **federal** funds.
- EPA will be revising their cross-cutter handbook to incorporate EO 13690.
- EPA expects that this will apply to the **FY17** capitalization grant and beyond.

Federal Flood Risk Management

- Three approaches are provided for calculating the flood elevation:
 - *Freeboard Approach – Base flood plus 2 ft for non-critical actions and base flood plus 3 ft for critical actions*
 - *Climate Informed Science Approach – The elevation that results from using a climate-informed science approach that uses the best available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science*
 - *500 Year Flood Approach – Use 500-year flood zone if available*

American Iron and Steel Update

- WRRDA made AIS a permanent part of the Clean Water program.
- AIS still subject to annual appropriation on the Drinking Water program (no appropriation yet for FY16).
- AIS Inspections – EPA has performed AIS inspections in 20 states at 60 facilities – none in MA - compliance has generally been good.
- The main issues are with certifications including:
 - *not referencing the project*
 - *not referencing a specific item*
 - *blanket certifications*
 - *not referencing AIS in particular*

American Iron and Steel Update

- At a minimum, the EPA wants to see the certification in the form of a **letter** from the **manufacturer** with the following information:
 - *A reference to the project*
 - *A reference to the specific item*
 - *A certification that the product complies with AIS*
 - *Where the item is manufactured*
 - *A signature of a representative of the manufacturer*
- This means that catalog cut sheets, manufacturer brochures, supplier letters, etc. do not constitute a manufacturer's certification and are not acceptable.
- A blanket certification may be acceptable based on the judgment of the engineer and inspector.

American Iron and Steel Update

- National Waiver for Minor Components within Iron and Steel Products – this is essentially a DeMinimis waiver for manufacturers.
 - *Hydrants and valves are specifically named in this waiver*
- DeMinimis waiver – small incidental components vs. 1% maximum item cost.
 - *EPA says items must be small and incidental to the project*
 - *Site reviews (by contractors) are saying if item is below 1% of the material cost, it is incidental*

Chapter 259 of the Acts of 2014

- Created the Planning and Technical Assistance Grant Program
 - *Provides grants of up to \$30,000 to fund asset management, wastewater planning and green infrastructure planning*
 - *\$400,000 provided in FY15 and awarded to 15 communities*
 - *\$1,000,000 included in EOEEA capital plan for FY16 - not released yet*



Other Issues?